

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VIRGIL LOUIS RATLIFF,

Petitioner,

v.

M. MARTEL,¹ Warden

Respondent.

Civil No. 13cv2030-GPC(NLS)

**SUMMARY DISMISSAL OF SECOND
OR SUCCESSIVE PETITION PUR-
SUANT TO 28 U.S.C. § 2244(b)(3)(A)
GATEKEEPER PROVISION**

Petitioner, Virgil Louis Ratliff, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, but without paying the \$5.00 filing fee or requesting leave to proceed in forma pauperis. Irrespective of that obstacle to proceeding with this case, the case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as an unauthorized second or successive petition.

PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS

The instant Petition is not the first Petition for a Writ of Habeas Corpus Ratliff has submitted to this Court challenging his conviction in San Diego County Superior Court Case No. SCD275300, despite some discrepancies in his statement of the date of conviction and the length of his sentence when compared to his prior Petition.

¹ Petitioner names an improper defendant. He is presently confined in Pelican Bay State Prison. The current warden of that institution is Greg Lewis. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). "[T]he 'state officer having custody' may be 'either the warden of the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.'" *Id.* The chief officer of the California Department of Corrections & Rehabilitation is currently Jeffrey Beard.

On August 11, 2010, Ratliff filed in this Court a Petition for Writ of Habeas Corpus in Case No. 10cv1705. In that petition, Ratliff challenged his conviction in San Diego Superior Court Case No. SCE275300. On August 9, 2012, this Court denied that petition on the merits and denied Ratliff's request for a certificate of appealability. (See Order filed Aug. 9, 2012 in Case No.10cv1705, ECF No. 140.) Ratliff appealed those determinations. The Ninth Circuit Court of Appeals also denied Ratliff's request for a certificate of appealability, terminating the action. (See Order filed May 24, 2013 in Case No. 10cv1705, ECF No. 155.)

INSTANT PETITION BARRED BY GATEKEEPER PROVISION

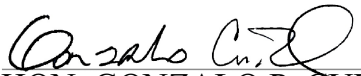
Ratliff is now seeking to challenge the same conviction he challenged in his prior federal habeas petition. Unless a petitioner shows he or she has obtained an order from the appropriate court of appeals authorizing the district court to consider a second or successive petition, the petition may not be filed in the district court. See 28 U.S.C. § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a second or successive petition.

CONCLUSION

Because there is no indication Petitioner has obtained permission from the Ninth Circuit Court of Appeals to file a second or successive petition, this Court cannot consider his Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner's filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. (*Attached for Petitioner's convenience is a blank Ninth Circuit Application for Leave to File Second or Successive Petition.*)

IT IS SO ORDERED.

DATED: September 17, 2013


HON. GONZALO P. CURIEL
United States District Judge

CC: ALL PARTIES